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INTERLOCUTORY PROCEEDINGS Christopher Wirth 2026-1 July

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Highlights:

Summary Judgment—Tactical and Procedural Considerations—When to bring the motion—it is important in each case for all parties to raise any concerns they have in relation to whether summary judgment is appropriate at the earliest opportunity. If a party will oppose a summary judgment motion on the basis that it is inappropriate for partial summary judgment, they should raise that issue at the time the motion is being scheduled and a failure to do so can be considered by the motion judge in assessing costs: see *Kotsoopoulos v. Toronto (City)*, 2026 ONCA 121, 2026 CarswellOnt 2131 (Ont. C.A.), additional reasons 2026 ONCA 206, 2026 CarswellOnt 4058 (Ont. C.A.).

Motions to Stay a Proceeding—Legislative Authority—Section 106 of the *Courts of Justice Act* gives the court the jurisdiction to stay any proceeding in the court on such terms that are considered just. In doing so, a court may grant a stay on a temporary basis or make a stay conditional on subsequent events in an alternate forum such as the continuation of a proceeding in that alternate forum. In this regard, the stay will be considered temporary if it is granted pending the outcome of the proceeding in the other forum where that proceeding would substantially reduce the issues to be determined or if success in the other proceeding could render the proceeding in issue substantially moot or otherwise have a material impact on the outstanding issues in it. This is consistent with the Court of Appeal's earlier decision in *Hollinger International Inc. v. Hollinger Inc.* (2004), 11 C.P.C. (6th) 245, 2004 CarswellOnt 3442 (Ont. S.C.J. [Commercial List]), affirmed 2004 CarswellOnt 5363 (Ont. C.A.), and leave to appeal to Divisional Court refused, 2005 CarswellOnt 723 (Ont. Div. Ct.). In that decision, the court developed a test that a temporary stay pending the resolution of another proceeding may be granted where:

- (a) There is substantial overlap of issues in the two proceedings;
- (b) The two cases share in the same factual background;
- (c) Issuing a temporary stay will prevent unnecessary and costly duplication of judicial and legal resources; and
- (d) The temporary stay will result in an injustice to the party resisting the stay.

See *Sociedad Concesionaria Metropolitana de Salud S.A. v. Webuild S.p.A.*, 2026 ONCA 28, 2026 CarswellOnt 708 (Ont. C.A.).